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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Frans Vandenbroek

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21378

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APPLIED MEDICAL RESOURCES CORPORATION

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EXAMINER

MCEVOY, THOMAS M

ART UNIT

PAPER NUMBER

3731

MAIL DATE

DELIVERY MODE

05/07/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/815,149	Applicant(s) VANDENBROEK ET AL.	
	Examiner THOMAS MCEVOY	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-18 is/are pending in the application.
- 4a) Of the above claim(s) 24-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-18 and 24-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Species B in the reply filed on January 22nd 2009 is acknowledged.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 10-18, 24-26 and 28 are rejected under 35 U.S.C. 102(a) as being anticipated by Yawata et al. (WO 2004/008944 A2).

Regarding claim 10, Yawata et al. disclose a jaw assembly (capable of being a single clip jaw assembly) adapted for use with a handle assembly in a surgical clip applier, comprising: a pair of jaws, 134a and 134b, adapted to receive a surgical clip, the jaws are movable between an open state and a closed state (p. 11, lines 5-6); a pair of elongate support arms, 132a and 132b, each adapted to support an associated one of the jaws between the open state of the jaws and the closed state of the jaws; a bridge 130 (Figure 10) disposed between the support arms to hold the jaws in an aligned relationship between the open state and the closed state; a housing, 101 and 102, disposed over at least the bridge, the housing having a generally fixed relationship with the bridge while permitting movement of the jaws between the open state and the

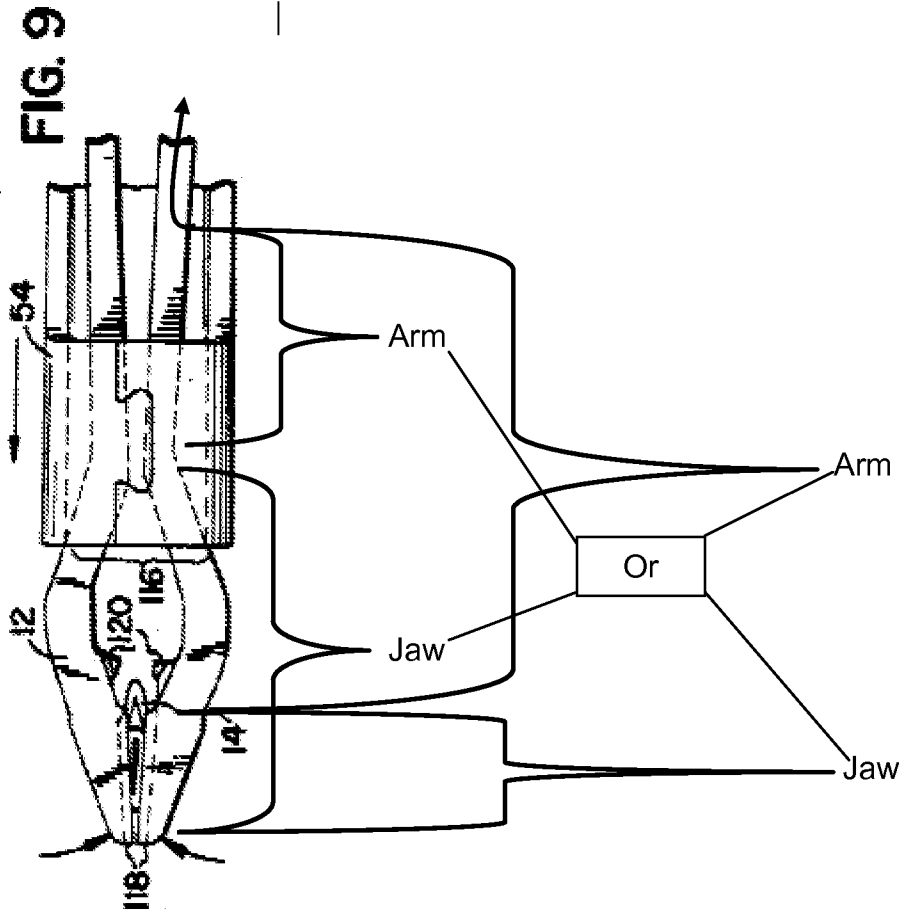
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closed state; and a coupling (bottom surface of 101 which contacts scissors) included in the housing, the coupling being adapted for attaching the housing to the handle assembly; wherein the jaw assembly is configured to receive only a single surgical clip at a time (the jaw assembly is capable of only receiving a single clip at time; however the jaw assembly is not incapable of receiving multiple clips), and the pair of jaws is adapted to receive a surgical clip exteriorly of the jaw assembly (the jaw assembly is capable of receiving a clip exteriorly of the jaw assembly). Regarding claim 11, the jaw, support arms and bridge contact each other and are integral. Regarding claim 12, the claimed phrase "wherein the housing the molded over the bridge" is being treated as a product by process limitation; that is, as set forth in MPEP 2113, product by process claims are not limited to the manipulation of the recited steps, only the structure implied by the steps. Once a product appearing to be substantially the same or similar is found, a 35 USC 102/103 rejection may be made and the burden is shifted to applicant to show an unobvious difference. MPEP 2113. The housing, 101 and 102, is found to be substantially the same or similar to the claimed housing. Regarding claims 13 and 14, the jaws are resilient and biased in the open position (p. 11, lines 5-6). Regarding claims 15-18, the jaws open and close in a plane separating the top and bottom surfaces of the arms. In a closed state, only the top and bottom surfaces of the arms can be in contact with the top and bottom sides of the housing (first and second portions) and the side surfaces can be squeezed out of contact with the side surfaces of the housing. Regarding claims 24-26, the mountings stubs are shown as claimed in

Figure 9. Regarding claim 28, the assembly is capable of not receiving any clips into the housing.

4. Claims 10-18, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Burbank et al. (US 5,431,668).

Regarding claim 10, Burbank et al. disclose a jaw assembly (capable of being a single clip jaw assembly) adapted for use with a handle assembly in a surgical clip applier, comprising: a pair of jaws 12 adapted to receive a surgical clip and movable between an open state and a closed state (Figure 8 vs. Figure 9); a pair of elongate support arms each adapted to support an associated one of the jaws between the open state of the jaws and the closed state of the jaws (Figure 9), see below:



The jaw assembly further comprises: a bridge (top of Figure 8 or 10) disposed between the support arms to hold the jaws in an aligned relationship between the open state and the closed state; a housing (54 or 16) disposed over at least the bridge, the housing having a generally fixed relationship with the bridge while permitting movement of the jaws between the open state and the closed state; and a coupling (proximal end 52 of 54; Figure 5) included in the housing, the coupling being adapted for attaching the housing to the handle assembly; wherein the jaw assembly is configured to receive only a single surgical clip at a time (the jaw assembly is capable of only receiving a single clip at time; however the jaw assembly is not incapable of receiving multiple clips), and the pair of jaws is adapted to receive a surgical clip exteriorly of the jaw assembly (the jaw assembly is capable of receiving a clip exteriorly of the jaw assembly). Regarding claim 11, the jaw, support arms and bridge contact each other and are therefore integral. Regarding claim 12, the claimed phrase "wherein the housing the molded over the bridge" is being treated as a product by process limitation; that is, as set forth in MPEP 2113, product by process claims are not limited to the manipulation of the recited steps, only the structure implied by the steps. Once a product appearing to be substantially the same or similar is found, a 35 USC 102/103 rejection may be made and the burden is shifted to applicant to show an unobvious difference. MPEP 2113. The housing 54 is found to be substantially the same or similar to the claimed housing. Regarding claims 13 and 14, the jaws are resilient and biased in the open position when not pushed together by 54 (Figure 8 vs. Figure 9). Regarding claims 15-18, the jaws open and close in a plane separating the top and bottom surfaces of the arms. In a

closed state, only the top and bottom surfaces of the arms can be in contact with the top and bottom sides (first and second portions) of the housing 54 and the side surfaces can be squeezed out of contact with the side surfaces of the housing as shown in Figure 9. Regarding claim 27, the arms can extend through the housing as diagramed above. The bridge forms the back of the jaw assembly and extends to the handle. Regarding claim 28, the housing is capable of not receiving any surgical clips.

Response to Amendment

5. The amendment filed on September 11th 2008 is sufficient to overcome the previous 35 U.S.C. 112 2nd rejection of record and the previous objection of record to the drawings.

Response to Arguments

6. Applicant's arguments filed September 11th 2008 have been fully considered but they are not persuasive. Applicant has argued that the Yawata et al. and Burbank et al. jaw assemblies are not configured to only receive a single surgical clip at a time. Examiner respectfully disagrees. The devices are capable of only receiving a single surgical clip at a time. The device is also configured to only receive a single clip at a time between the jaws. The jaw assemblies are not – incapable of receiving multiple surgical clips. The jaw assemblies are not – only configured to receive a single surgical clip at a time. Applicant has argued that the jaws of the Yawata et al. and Burbank et al. devices are not adapted to receive a surgical clip exteriorly of the jaw assembly. Examiner believes that the jaws are capable of receiving a surgical clip that is moved from a position exterior of the jaw assembly and placed into the jaws.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Mcevoy whose telephone number is (571) 270-5034. The examiner can normally be reached on M-F, 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Thomas McEvoy/
Examiner, Art Unit 3731

/Anh Tuan T. Nguyen/
Supervisory Patent Examiner, Art Unit 3731
5/6/09